

Matthew B. Lehr (Bar No. 213139)
 Diem-Suong T. Nguyen (Bar No. 237557)
 Douglas K. Yatter (Bar No. 236089)
 Yiping R. Liao (Bar No. 238319)
 DAVIS POLK & WARDWELL
 1600 El Camino Real
 Menlo Park, California 94025
 Telephone: (650) 752-2000
 Facsimile: (650) 752-2111

Attorneys for Plaintiff
 VNUS Medical Technologies, Inc.

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

VNUS MEDICAL TECHNOLOGIES, INC.,)	CASE NO. C05-02972 MMC
)	
Plaintiff,)	STIPULATED PROTECTIVE ORDER
)	REGARDING CONFIDENTIAL
v.)	INFORMATION
)	
DIOMED HOLDINGS, INC., DIOMED)	
INC., ANGIODYNAMICS, INC., and)	Judge: Hon. Maxine M. Chesney
VASCULAR SOLUTIONS, INC.,)	
)	
Defendants.)	
)	

The parties anticipate that discovery in this case will involve the disclosure of confidential information, and therefore agree to the following Protective Order under Rule 26 of the Federal Rules of Civil Procedure.

1. Designation of Confidential Material.

(a) General. Any documents, materials, tangible things, items, testimony or other information filed with the Court, or produced or provided by any party in connection with this litigation (“Producing Party” or “Designating Party”) to another party (“Receiving Party”), may be designated as “Confidential” or “Confidential – Attorneys’ Eyes Only.” All such information and material derived from it constitutes “Designated Material” under this Protective Order. As a general guideline, Designated Material shall be so designated for the purposes of avoiding invasion of privacy or protecting proprietary information, confidential business or financial information,

1 trade secrets, or personal or financial affairs. A Designating Party may designate information
2 “Confidential – Attorneys’ Eyes Only” when the information is particularly sensitive because it
3 relates to trade secrets, technical information, technical practices or methods, present or future
4 marketing plans, product data or projections, financial data, business strategy, or agreements and
5 relationships with third parties.

6 (b) Designation Procedure. A party wishing to invoke the provisions of this
7 Protective Order shall designate the documents, materials, items, or information, or portions
8 thereof, at the time such information is disclosed, or when the party seeking protection becomes
9 aware of the nature of the information disclosed and sought to be protected. Designation shall be
10 made by marking or stamping the documents, materials, items, or information “Confidential” or
11 “Confidential – Attorneys’ Eyes Only” on all pages (or, if applicable, paragraphs). In the case of
12 information stored on electronic media, the items produced shall be marked or stamped on the
13 media if possible. In the case of information produced for inspection, but not yet provided to the
14 inspecting party, such information shall presumptively be deemed “Confidential – Attorneys’ Eyes
15 Only,” regardless of whether so identified, until copies thereof are produced to the inspecting party.

16 (c) Designation Procedure For Deposition Testimony. With respect to
17 deposition testimony, the witness under deposition, or his/her counsel, or any counsel representing
18 any person at the deposition, may designate such testimony as “Confidential” or “Confidential-
19 Attorneys’ Eyes Only” either on the record at the deposition or within thirty (30) days after the
20 mailing of the deposition transcript by the court reporter. The provisions of this paragraph may be
21 invoked with respect to the witness’s entire deposition, or any portion thereof, at any time during
22 the deposition. Until thirty (30) days after mailing of the transcript by the court reporter has passed,
23 the entire transcript shall be treated as “Confidential – Attorneys’ Eyes Only.”

24 2. Use of Designated Material. Absent a specific order by this Court, Designated
25 Material shall be used by the persons or entities to whom such information is disclosed solely for
26 purposes of this litigation, and not for any business, competitive, or governmental purpose or
27 function, and such information shall not be disclosed to anyone except as provided under this
28 Protective Order; except that nothing in this Protective Order shall preclude any party or its counsel

1 of record from disclosing or using, in any manner or for any purpose, any information or
2 documents from the party's own files which the party itself has designated as "Confidential" or
3 "Confidential – Attorneys' Eyes Only."

4 3. Access to Material Designated "Confidential." Material designated "Confidential"
5 under this Protective Order, and copies, extracts, compilations, summaries, and other materials that
6 include or reflect such Designated Material, may not be provided to any third party. Material
7 designated "Confidential" may be submitted to the Court only if submitted under seal in accordance
8 with Paragraph 7 below.

9 4. Access to Material Designated "Confidential – Attorneys' Eyes Only." Material
10 designated "Confidential – Attorneys' Eyes Only" under this Protective Order, and copies, extracts,
11 compilations, summaries, and other materials that include or reflect such Designated Material, may
12 be given, shown, made available, or communicated in any way only to:

13 (a) outside litigation attorneys for the parties who are employed by the firms of
14 record in this case, their staffs, and professional litigation support vendors retained by them;

15 (b) qualified persons taking testimony involving "Confidential – Attorneys'
16 Eyes Only" information, and necessary stenographic and clerical personnel thereof;

17 (c) independent consultants or experts and their staffs, if cleared by the parties
18 pursuant to Paragraph 5 of this Protective Order;

19 (d) the Court and its staff; and

20 (e) a party's in-house counsel or outside general counsel with the consent of the
21 Designating Party, provided:

22 (i) Such consent will not be unreasonably withheld, and the refusal to
23 grant such consent shall be based on the Designating Party's good faith concerns
24 about protecting intellectual property rights or competitive business information
25 from the requesting party's employees or representatives; and

26 (ii) The Designating Party may condition its consent on the material
27 requested not being provided to any attorney involved in prosecuting patents or
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1 making decisions regarding the party's competitive position as to the Designating
2 Party.

3 5. Clearance Procedure for Consultants and Experts. Designated Material may be
4 provided to an independent consultant or expert as described in Paragraph 4(c) only after ten (10)
5 business days following written notice to the Designating Party of the proposed disclosure to the
6 consultant or expert. With the written notice shall be included a fully executed copy of the
7 Acknowledgement attached hereto as Exhibit A, completed by the consultant or expert. If the
8 Designating Party objects, in writing, to disclosure of Designated Material to the consultant or
9 expert within the ten (10) day period, no disclosure of Designated Material may be made to the
10 consultant or expert pending resolution of the objection. If the parties cannot resolve the issue
11 informally, the party objecting to the proposed disclosure may thereupon seek an appropriate order
12 from the Court disqualifying the consultant or expert or protecting against the proposed disclosure
13 to the consultant or expert. Until the Court rules on the matter, no disclosure of Designated
14 Material to the consultant or expert shall be made.

15 6. Treatment of Designated Material. Copies of Designated Material may only be
16 made where reasonably necessary to prepare work product or conduct proceedings in this litigation.
17 Material designated "Confidential – Attorneys' Eyes Only" or copies thereof may not be stored or
18 viewed at a non-designating party's business location, except to the extent provided in this
19 Paragraph. Such information may be stored or viewed only at or on:

- 20 (a) the physical offices of outside attorneys of record in this litigation, or of
21 professional litigation support vendors retained by such attorneys;
- 22 (b) the physical offices of consultants or experts cleared under Paragraph 5 of
23 this Protective Order;
- 24 (c) the site where any deposition relating to the information is taken;
- 25 (d) the Court;
- 26 (e) any intermediate location reasonably necessary to transport the information
27 (*e.g.*, a hotel prior to a deposition); or
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1 (f) computers/servers/other electronic media of the outside attorneys of record in
2 this litigation, professional litigation support vendors employed by outside attorneys of record, or
3 experts and consultants cleared under Paragraph 5, provided those persons have a reasonable
4 expectation of confidentiality associated with the computers/servers/other electronic media.

5 Such information may also be viewed electronically at the physical office of a party's in-
6 house counsel or outside general counsel, provided that the information is not stored at the location
7 and that such counsel may receive the information under Paragraph 4(e) of this Protective Order.

8 7. Filing of Designated Material with the Court. Where filed with the Court (as
9 pleadings or evidence), Designated Material shall be delivered sealed to the Clerk of the Court and
10 shall not be available to public inspection. Envelopes or containers used to seal such documents
11 shall bear the notation, "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION
12 AND IS BEING SUBMITTED UNDER SEAL PURSUANT TO A PROTECTIVE ORDER," and
13 shall state the party or person who designated any confidential information that the document
14 contains. Where appropriate, the envelope or container shall bear the additional notation,
15 "CONFIDENTIAL – ATTORNEYS' EYES ONLY." No such sealed envelope or container shall
16 be provided to any individual not otherwise permitted to view the relevant Designated Material
17 under this Protective Order.

18 8. Errors in Designation. A Producing Party that inadvertently fails to designate an
19 item pursuant to this Protective Order at the time of the production shall make a correction
20 promptly after becoming aware of such error. Such correction and notice thereof shall be made in
21 writing accompanied by substitute copies of each item, appropriately designated. Those individuals
22 who reviewed the documents or information prior to notice of the failure to designate by the
23 Producing Party shall, to the extent reasonably feasible, return to the Producing Party or destroy all
24 copies of such undesignated documents and shall honor the provisions of this Protective Order with
25 respect to the use and disclosure of any confidential information contained in the undesignated
26 documents, from and after the date of designation.

27 9. Improper Disclosure. If information designated pursuant to this Protective Order is
28 disclosed to any person other than in the manner authorized by this Protective Order, the party

1 responsible for this disclosure must immediately bring all pertinent facts relating to such disclosure
2 to the attention of the Designating Party, without prejudice to other rights and remedies of the
3 Designating Party, and shall make every effort to prevent further improper disclosure.

4 10. Objections to Designations. If at any time during the pendency of this litigation any
5 party claims that information is not appropriately designated or that permission for in-house or
6 outside general counsel to view certain material has been improperly withheld (the “Objecting
7 Party”), the Objecting Party may serve a captioned notice of objection on the Designating Party.
8 Within ten (10) calendar days of receiving such notice, the Designating Party shall respond in
9 writing. If the Designating Party and the Objecting Party cannot resolve the dispute by informal
10 conference, the Objecting Party may move for an order from the Court for re-designation within ten
11 (10) calendar days from service of the Designating Party’s written response. The original
12 designation shall remain effective until three (3) days after the Court’s entry of an order re-
13 designating the materials.

14 11. Use of Designated Material at Trial. This Protective Order, insofar as it restricts the
15 dissemination and use of Designated Material, shall not apply to the introduction of evidence at
16 trial. However, any Party may seek appropriate court orders, including without limitation, an order
17 which restricts the use of any material covered by this Protective Order during the trial, requests
18 that portions of the transcript be sealed, or restricts access of the public to certain portions of the
19 trial.

20 12. Inadmissibility of Designation. Unless the parties stipulate otherwise, evidence of
21 the existence or nonexistence of a designation under this Protective Order shall not be admissible
22 for any purpose, nor shall the designation or acceptance of any information designated pursuant to
23 this Protective Order constitute an admission or acknowledgement that the material so designated is
24 in fact proprietary, confidential, or a trade secret.

25 13. Inadvertent Production. Counsel shall make their best efforts to identify materials
26 protected by the attorney-client privilege or the work product doctrine prior to the disclosure of any
27 such materials. The inadvertent production of any document or thing shall be without prejudice to
28 any claim that such material is protected by the attorney-client privilege or protected from

1 discovery as work product and no Producing Party shall be held to have waived any rights
2 thereunder by inadvertent production. If a Producing Party discovers that materials protected by
3 the attorney-client privilege or work product doctrine have been inadvertently produced, counsel
4 for the Producing Party shall promptly give written notice to counsel for the Receiving Party. The
5 Receiving Party shall take prompt steps to ensure that all known copies of such material are
6 returned to the Producing Party. The Receiving Party may afterward contest such claims of
7 privilege or work product as if the materials had not been produced, but shall not assert that a
8 waiver occurred as a result of the production.

9 14. Notification of Subpoena, Document Request, or Order in Other Litigation. If a
10 Receiving Party is served with a subpoena, document request, or order issued in other litigation that
11 would compel disclosure of any information or items designated in this action as “Confidential” or
12 “Confidential – Attorneys’ Eyes Only,” the Receiving Party must so notify the Designating Party in
13 writing immediately and in no event more than five (5) days after receiving the subpoena,
14 document request, or order. Such notification must include a copy of the subpoena, document
15 request, or order. The Designating Party shall bear the burden and expense of seeking to protect the
16 requested material from production in the other litigation.

17 15. Final Disposition of Designated Material. Upon termination of this litigation
18 following settlement or final judgment (including exhaustion of all appeals), the originals and all
19 copies of Designated Material shall be either destroyed or turned over to the Producing Party, or to
20 its counsel, within sixty (60) days. However, attorneys of record may retain pleadings, attorney and
21 consultant work product, and depositions (with exhibits) for archival purposes. If Designated
22 Material is destroyed pursuant to this Paragraph, counsel shall provide to opposing counsel a
23 certification identifying when and how the destruction was performed.

24 16. Survival. The terms of this Protective Order shall survive termination of this
25 litigation.
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1 Assent to the entry of the foregoing Protective Order is hereby given by the parties by and
2 through their attorneys.

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4 Dated: March 30, 2006

ATTORNEYS FOR DEFENDANT
ANGIODYNAMICS, INC.

5
6 /S/ William Bright, Jr.

William H. Bright, Jr.
Mark D. Giarratana
MCCARTER & ENGLISH, LLP
CityPlace I, 36th Floor
Hartford, CT 06103
(860) 275-6700/(860) 724-3397 (fax)
wbright@mccarter.com
mgiarratana@mccarter.com

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11 Dated: April 10, 2006

ATTORNEYS FOR DEFENDANTS
DIOMED HOLDINGS, INC. and DIOMED,
INC.

12
13
14 /S/ Michael A. Albert

Michael A. Albert
James J. Foster
Michael N. Rader
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02210
(617) 720-3500/(617) 720-2441 (fax)
malbert@wolfgreenfield.com

15
16
17
18
19 Dated: April 10, 2006

ATTORNEYS FOR DEFENDANT
VASCULAR SOLUTIONS, INC.

20
21 /S/ Heather D. Redmond

Heather D. Redmond
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-6343/(612) 340-2868 (fax)
Redmond.heather@dorsey.com

1 Dated: April 14, 2006


ATTORNEYS FOR PLAINTIFF
VNUS MEDICAL TECHNOLOGIES, INC.

2
3 /S/ Diem-Suong T. Nguyen

4 Diem-Suong T. Nguyen
5 DAVIS POLK & WARDWELL
6 1600 El Camino Real
7 Menlo Park, CA 94025
8 (650) 752-2000/(650) 752-2111 (fax)
9 suong.nguyen@dpw.com

10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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12 Dated: April 18, 2006

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14 MAXINE M. CHESNEY
15 United States District Judge
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